IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

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WRIT PETITION NO : 13696 of 1994

AND

WRIT PETITION NO : 1746 of 1995

WRIT PETITION NO : 13696 of 1994

Between:

The Management of Hindustan Aeronautics Limited, represented by General Manager, Balanagar, Hyderabad.

..... PETITIONER

AND

1 Additional Industrial Tribunal-cum-Additional Labour Court, represented by Presiding Officer, Hyderabad.
2 Smt. Rukma Bai, H.No.9, SBH Colony, Pool Bagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an Order direction, or a writ particularly one in the nature of Writ of Certiorari after calling for the records from the 1st Respondent and quash the award passed in I.D.No.6/93 (Old I.D.No.6/83), dt: 15-11-1993.

Counsel for the Petitioner: MR.K.SRINIVASA MURTHY

MS.UMA DEVI

Counsel for the Respondent NO.1: GP FOR LABOUR.

Counsel for the Respondent No.2: Mr. ASHOK ANAND KUMAR.

WRIT PETITION NO : 1746 of 1995

Between:

Smt Rukma Bai, W/O. Jagdishchandra, Workman of R2,
R/o: No.9. SBH Colony, Phoolbagh, Hyderabad.

..... PETITIONER

AND

1 Additional Industrial Tribunal-Cum-Additional Labour Court,
Ist Floor, Chandravihar Building, M.J.Road, Hyderabad.
2 M/s. Hindustan Aeronautics Limited, Balanagar,
Hyderabad, represented by Personnel Officer.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass a Writ, Order or Direction, more in the nature of Writ of Certiorari, calling for the records in I.D.No.6/93 (old No.I.D.6/83) dated 15-11-1983, on the file of the 1st Respondent Additional Labour Court-cum-Additional Industrial Tribunal at Hyderabad (published in G.O.Rt.No.932 Women's Development Child Welfare and Labour (LAB.I) Department, dt.3.5.1994) and set aside the same to the extent of denial of back wages to the petitioner for the period of her employment and consequently direct the 2nd Respondent management to pay the back wages for the entire period of her un-employment till the date of reinstatement.

Counsel for the Petitioner: MR. ASHOK ANAND KUMAR

Counsel for the Respondent No.1: G.P. FOR LABOUR

Counsel for the Respondent No.2: MR.K.SRINIVASA MURTHY

Ms.UMA DEVI.

The Court made the following:

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ORAL ORDER:

Both the Writ Petitions can be disposed of by a common order as they arise out of the Award passed by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, (for short Tribunal) in I.D.No.6 of 1993, dated 15.11.1993.

2. Writ Petition No.13696 of1994 was filed by the Management assailing the Award passed by the Tribunal. Insofar as it relates to refusal of back wages Writ Petition No.1746 of 1995 was filed by the workman viz., Smt.Rukma Bai.

3. The necessary facts leading to the filing of the both the Writ Petitions are as follows:

The workman-Smt.Rukma Bai was working as Radio Wirer in Hindustan Aeronautics Limited, a Government of India Undertaking. While so, a charge was framed against the workman alleging that there was shortage of 2347 Transistor pieces and that she is responsible for the said loss and accordingly it constitute misconduct under the Standing Orders. The workman denied the said charge. Thereafter, an enquiry was conducted and ultimately she was found guilty of the charge framed against her. The Management imposed punishment of removal from service on 23.1.1982. Aggrieved by the removal order, she raised an industrial dispute before the Tribunal in I.D.No.6 of 1993. Before the Tribunal the claim was filed by the workman concerned and the Management opposing the relief of the workman filed the reply statement.

The learned Tribunal, after considering the evidence adduced before the Enquiry Officer, found that the charge as framed against the workman was not sustainable. Accordingly it set aside the order of removal and directed reinstatement of the workman concerned without back wages. Assailing the said award, the Management filed Writ Petition No.13696 of 2004.

Inasmuch as the back wages denied to the workman, she filed Writ Petition No.1746 of 1995.

4. The learned counsel appearing for the Management, while attacking the award, submits that the Tribunal has completely misconstrued the scope of the enquiry and substituted itself as the Enquiry Officer. She further submits that in the enquiry, the guilt of the workman was established on the basis of the material available on record and also the evidence adduced, and such a finding ought not to have been set aside by the Tribunal holding that the charge as not proved. Further, the learned counsel would also submit that there is any amount of evidence to establish the misconduct on the part of the workman and that the relevant material has not been looked into by the Tribunal and mechanically basing on surmises and conjectures held that the charge has not proved, which finding is wholly illegal and the same is liable to be set aside. Her further contention is that Hindustan Aeronautics Limited is a Government of India Undertaking engaged in manufacture of defence products, which are highly sensitive, and when the workman was found to be guilty of the misconduct of theft, such a person cannot be employed and even if the Court comes to the conclusion that the charge has not been established, since it requires complete confidence of the employer in the employee, she pleaded that the employer has lost confidence over the workman concerned and therefore appropriate relief could have been awarded viz., awarding of compensation, except reinstating her into service.

5. On the other hand the learned counsel appearing for the workman, who is also the petitioner in the other Writ Petition, submits that by virtue of the powers vested under Section 11-A of the Industrial Disputes Act, it is always open for the Tribunal to consider the finding of the Enquiry Officer as to whether the charge established is based on evidence or not and therefore the Tribunal, after taking into consideration the evidence adduced, came to the conclusion that the charge could not be established against her, but, however, instead of giving normal reinstatement with back wages, the learned Tribunal granted only reinstatement without back wages and such a relief is illegal and contrary to law. Therefore, the learned counsel would submit that the Writ Petition filed by the Management is liable to be dismissed, and the Writ Petition filed by the workman is to be allowed holding that the workman is entitled for full wages as

she has been illegally removed from service and she has been kept out of service from the date of removal till the date of the award.

6. The issue that arises for consideration is whether the Award of the Tribunal is sustainable in law.

7. As per the pleadings and also as per the documentary evidence adduced before the Tribunal, it is seen that the workman-Rukma Bai and another workman by name Ms.Seeta were working as Radio Wirers, and the Transistors were being handed over to them from time to time by one Surya Narayana, Assistant Engineer, for testing and return. It is also on record that some of the Transistors were entrusted to them in the last week of December, 1978. Though it is stated that there was entrustment of 4800 Transistors, the quantity was disputed, but the receipt of some Transistors were admitted by the workman. According to the workman-Rukma Bai, she and one Seeta were entrusted with the Transistors in the last week of December, 1978 and the workman-Rukma Bai went on leave from 2.1.1979, 1st being holiday, up to 5.1.1979. But during this period, Seeta, another co-employee who was on duty, appears to have reported that there was shortage of Transistors. As soon as the workman concerned reported for duty, the disciplinary proceedings were initiated against her alleging that she is responsible for the loss of missing Transistors. The Tribunal noted the situation and found that Suryanarayana, who was working as Assistant Engineer, used to send the Transistors for testing in lumpsum and after the test was done by the petitioner and Seeta jointly, they used to send the Transistors back to the Department for further disposal. Admittedly during the period of leave of the workman concerned from 2.1.1979 to 5.1.1979, only Seeta was handling the situation and it is only then she found that some of the Transistors were missing from the cup board, which was in her custody. It is also on record that Mr.Suryanarayana while deposing before the Enquiry Officer has categorically admitted that there was no documentary record to establish that 4800 Transistors were entrusted to the workmen Rukma Bai and Seeta jointly. It is only on mere remembrance he has given this figure and that is why the Enquiry Officer as well as the Tribunal found fault with this witness. Suryanarayana, being a responsible Officer, did not maintain any record to establish that the entrustment was being done from time to time jointly to both the workmen concerned. Under those circumstances

the Tribunal found that the very entrustment was not established.

8. The learned counsel for the Management, however, submits that when the workman concerned categorically accepted the entrustment of the Transistors, the finding by the Tribunal that she is not responsible is illegal. This contention has to be rejected intoto inasmuch as the workman concerned never accepted the receipt of 4800 Transistor pieces. Though she accepted that some Transistor pieces were given for testing jointly to her and Seeta, the quantity was never accepted. Though it is stated by Seeta, during the period of the absence of the workman concerned, that 4800 Transistor pieces were missing, which were entrusted to them jointly, her admission cannot be put against the other workman-Rukma Bai more especially when Seeta was not proceeded with in any disciplinary proceedings. Therefore, finding of the Tribunal that the very entrustment was not established for lack of documentary evidence cannot be said to suffer from any infirmity. Further it is curious to note that when such sophisticated instruments are being prepared for defence purpose, the relevant documents are not forthcoming and it is also not understood as to why action was not initiated against Seeta and Suryanarayana for the serious dereliction of duties, and trying to find fault only with a person who was not on duty when the shortage was detected would lead to inference that the Management tried to shield them and the blame was sought to be fastened on Rukma Bai and that too in her absence. Thus, the finding of the Tribunal that the charges could not be established against the workman-Rukma Bai is fully justified and the same cannot be interfered with under Article 226 of the Constitution of India. The finding of the Tribunal being a finding of fact basing on the evidence available on record, normally this Court is loath to interfere with the same sitting under Article 226 of the Constitution of India, unless the finding is perverse or contrary to the evidence on record. Under such circumstances, I do not find any illegality in the finding recorded by the Tribunal.

9. Coming to the question of relief of back wages, the learned counsel for the Management submits that the Management lost confidence in the employee as she has committed misconduct of theft in a company which was engaged in a highly sensitive defence products, and secrecy has to be maintained at all levels. While the argument appears to be appealing, at the same time it is not

understood as to why the action was not initiated on the other two persons when such is the situation. Moreover, no evidence was adduced by the Management to sustain the plea of loss of confidence. Under those circumstances, plea of loss of confidence appears to be only to save the other two employees and not a *bona fide* one in the fact situation of the case. Thus, I find that the Tribunal had quite rightly rejected the contention of loss of confidence.

10. The third issue that arises for consideration is whether the relief granted by the Tribunal is proper and just when once the charge is not established. It is not in dispute that the workman-Rukma Bai is entitled for normal relief of reinstatement with back wages, but in the instant case the Tribunal has denied the back wages, for which the workman concerned filed a separate Writ Petition. Granting of back wages is a discretionary relief, which vests with the Tribunal and taking the cumulative effect of the situation, the Tribunal was of the opinion that the back wages should not be granted, and such an exercise of discretionary power cannot be interfered with by this Court unless the same was perverse or contrary to law. Under those circumstances, I find that refusing back wages cannot be said to be either arbitrary or illegal.

11. Accordingly the Writ Petitions filed by the Management as well as the workman-Rukma Bai are dismissed. No costs.

17-02-2005

SSR

To

1. The General Manager, Management of Hindustan Aeronautics Limited, Balanagar, Hyderabad.

2. The Presiding Officer, Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad.
3. 2 CCs to G.P. for Labour, High Court of A.P. Hyderabad. (OUT)

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